



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

CITY OF SOMERSWORTH, N.H. *

*

Petitioner *

*

CASE NO. A-0412:4

v. *

*

DECISION NO. 87-14

AMERICAN FEDERATION OF STATE, *

COUNTY & MUNICIPAL EMPLOYEES, *

COUNCIL 93, LOCAL 863 *

*

Respondent *

APPEARANCES

Representing City of Somersworth

Philip Munck, City Manager

Representing American Federation of State, County & Municipal Employees, Council 93, Local 863

James C. Anderson

Also in attendance

Alfred Couture

James Allmendinger, Esq.

BACKGROUND

On November 25, 1986 the City of Somersworth ("City") by letter asked for a "Stay of Arbitration" of a grievance between the City and Local 863 of AFSCME, Council 93 ("Union") on the grounds that the union's request for arbitration was not filed in a timely manner under contract provisions. The arbitration was given a case number by the AAA and scheduled for a hearing on December 8, 1986.

The City claimed specifically that a grievance was filed (step one) on 6-16-86 and denied the next day by the Director of Water Works; the grievance was then delivered on the same day (6-17-86) to the Personnel Advisory Board and the last day under the contract to file for arbitration (contract says: 20 work days after receipt by Personnel Advisory Board). On 7-17-86 AFSCME filed for arbitration and the City claims this is in violation of the contract.

After prima facie inspection of the calendar and the contract the PELRB issued a temporary cease and desist order on 12-5-86 pending a hearing on the merits.

A hearing was held at PELRB offices in Concord, N.H. on January 8, 1987.

FINDINGS OF FACT AND RULINGS OF LAW

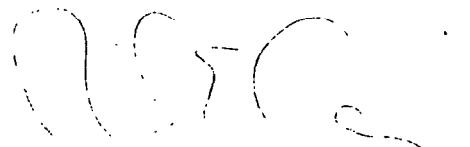
1. AFSCME argued that the city had not exhausted "administrative remedies" since the grievance procedure had not been completed.
2. AFSCME further argued that the arbitrator must be allowed to determine arbitrability and whether the contract was broken and referred to certain contract provisions.
3. The City argued that the N.H. Supreme Court had ordered the PELRB to examine cases of unfair labor practices involving improper demands for arbitration, citing Nashua v. Murray (NH514A2d, 1269).
4. The NEA-New Hampshire attorney offered the PELRB an amicus brief addressing the issue raised by the Murray case; the city objected to the NEA-New Hampshire brief.
5. The city had no witnesses but had brought depositions from some involved with the grievance procedure; the union objected to depositions as being impossible to cross-examine.

RULINGS OF LAW

The PELRB concluded that the city had failed to prepare a case which could be heard.

DECISION

The PELRB dismissed the complaint, without prejudice, and dissolved the temporary cease and desist order. The PELRB declined to accept the amicus brief from NEA-New Hampshire preferring to await a case to be heard on the merits of this issue.



ROBERT E. CRAIG, CHAIRMAN

Signed this 26th day of February, 1987.

By unanimous vote. Chairman Robert E. Craig presiding. Members Seymour Osman, Richard Molan and Richard Roulx present and voting. Also present Evelyn C. LeBrun, Executive Director.